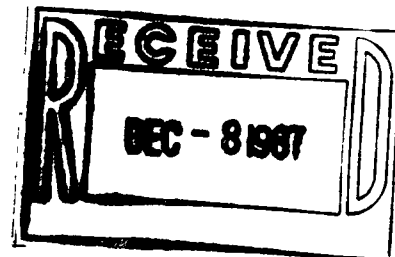


WILFRED L. SANDERS, JR. **
EDWARD J. McDERMOTT **
PATRICIA McKEE
JOHN V. DALY *
ANN C. THOMPSON
DAVID WOLOWITZ **
LAWRENCE M. EDELMAN **
MARK E. BELIVEAU
DAVID J. DUNFEY ***

Sanders and McDermott
Professional Association
Attorneys at Law
408 Lafayette Road
Hampton, New Hampshire 03842-0907
603-926-8926



*MEMBER NH AND NY BARS
**MEMBER NH AND MA BARS
***MEMBER NH, MA AND ME BARS

TELECOPIER 603-926-0584



SDMS DocID 559819

December 4, 1987

7 7

Mr. Paul Marchessault
U.S. Environmental Protection
Agency
P. O. Box 3409
Reston, VA 22091

Superfund Records Center
SITE: Coakley
BREAK: 11.9
OTHER: 559819

Attention: Ms. Julia Staines

Re: Information Request for Coakley Landfill - Town of
New Castle

Dear Ms. Staines:

Enclosed please find the Town of New Castle's responses
and available documentation with regard to the above matter.

I would appreciate receiving copies of all documents
and other information in your files pertaining to the Town of
New Castle's connection with the Coakley landfill.

Please feel free to call me if you have any questions.

Very truly yours,

SANDERS AND McDERMOTT
PROFESSIONAL ASSOCIATION

Mark E. Beliveau

MEB:cn

Enclosures

cc: Town of New Castle

Responses to Information Request

Each response set forth below is preceded by the number of the Request to which it corresponds.

GENERAL INFORMATION

1. Sanders and McDermott Professional Association, 408 Lafayette Road, Hampton, New Hampshire 03842, by Attorney Mark E. Beliveau on behalf of the Town of New Castle.

2. Peter Gamester, Chairman of the New Castle Board of Selectmen (Present term 1985-1988), Alexander D'Antonio, Selectman for the Town of New Castle (Present term 1986-1989), Clint Springer, Selectman for the Town of North Hampton (Present term 1987-1990).

3. Photostatic copies of all of the documents consulted, examined, or referred to in the preparation of each Response are appended hereto. The upper right hand corner of the first page of each such document shall indicate the number of the Request to which it pertains.

4. Persons who may be able to provide a more detailed or complete response to any Request, or who may be able to provide additional responsive documents are as follows:

- a. City of Portsmouth, New Hampshire.
- b. Coakley Landfill, Inc.
- c. Ronald C. Coakley.
- d. Pease Air Force Base.
- e. United States Coast Guard Station, New Castle, New Hampshire.
- f. Wentworth Hotel, New Castle, New Hampshire.
- g. Portsmouth Yacht Club, New Castle, New Hampshire.
- h. Town of Rye, New Hampshire.
- i. State of New Hampshire.
- j. Eliot, Maine.
- k. North Hampton, New Hampshire.
- l. Portsmouth Naval Shipyard.
- m. Newington, New Hampshire.

5. Richard M. Philbrick, 354 Central Road, Rye, New Hampshire 03870, has picked up and hauled the Town of New Castle's municipal waste, (i.e., door-to-door pickup of household garbage for each resident of the Town) since 1972. Other persons who may have knowledge or information about the generation, use, purchase, treatment, storage, disposal or other handling of

materials at, or transportation of materials to the Site are as follows:

- a. City of Portsmouth, New Hampshire.
- b. Coakley Landfill, Inc.
- c. Ronald C. Coakley.
- d. Pease Air Force Base.
- e. United States Coast Guard Station, New Castle, New Hampshire.
- f. Wentworth Hotel, New Castle, New Hampshire.
- g. Portsmouth Yacht Club, New Castle, New Hampshire.
- h. Town of Rye, New Hampshire.
- i. State of New Hampshire.
- j. Eliot, Maine.
- k. North Hampton, New Hampshire.
- l. Portsmouth Naval Shipyard.
- m. Newington, New Hampshire.

The above-referenced persons are those entities who are known or who have been suggested as generators, transporters, operators, or owners, of the Site.

6. Possibly any of the persons referenced in the two preceding Responses.

7. The Town of New Castle has not received any previous Information Request letters.

FINANCIAL/CORPORATE INFORMATION

8. Town of New Castle, New Hampshire. The current Chairman of the Board of Selectmen is Peter Gamester, Mainmast Circle, New Castle, New Hampshire.

9. Not applicable.

10. (a) The Town of New Castle is a municipal corporation organized under the laws of the State of New Hampshire.

(b) Service of writs against the Town may be made upon one of the Selectmen and the Town Clerk. New Hampshire Revised Statutes Annotated 510:12 provides that service of process may be made on a Town Clerk by leaving a copy of the writ at his office, in the event the Town Clerk has an office separate from his dwelling house.

(c) New Hampshire Revised Statutes Annotated 507-B governs certain actions against governmental units. A copy of the Statute is appended hereto. If this Statute is applicable,

it provides at Section 7 thereof, that no actions shall be brought against a governmental unit unless such is commenced within four years after the time of injury or damage. As a condition precedent thereto, the Plaintiff is required to notify the clerk of the governmental unit by registered mail within sixty (60) days after such injury or damage as to the date, time and location where said injury or damage occurred. This section further provides that where lack of written notice, actual knowledge or reasonable opportunity to obtain knowledge of any injury or damage within such sixty (60) day period is alleged by the governmental unit, the burden of proof shall be on the governmental unit to show that it was substantially prejudiced thereby. This Statute was recently amended by adding Sections 9 and 10. Section 9 provides a pollutant liability standard and Section 10, entitled "Statutory Construction", provides guidance as to how the Statute is to be applied. As a result of Section 10, the time limitation and notice requirement referred to above may be superseded.

11. The Town of New Castle provides various municipal services to its inhabitants.

12. See list of New Castle insurance policies appended hereto.

13. The accounting policies of the Town of New Castle conform to generally accepted accounting principles for local governmental units, except as indicated hereinafter. The accounts of the Town are organized on the basis of funds and account groups, each of which is considered to be a separate accounting entity. The operations of each fund are accounted for by providing a separate set of self-balancing accounts which comprise its assets, liabilities, fund balances, revenues, and expenditures. The Town reports its activities in individual funds to comply with the limitations and restrictions placed on both the resources made available to the Town and the services provided. The Town does not maintain a record of general fixed assets and, accordingly, a general fixed asset group of accounts, required by generally accepted accounting principles, is not presented. Appended hereto is a copy of the New Castle combined balance sheet of all fund types and account groups as of June 30, 1987.

GENERATOR/TRANSPORTER INFORMATION

14. (a) Richard M. Philbrick, 354 Central Road, Rye, New Hampshire 03870, has picked up and hauled household garbage from each resident of the Town since 1971. In addition, residents were issued stickers for identification purposes and as a result,

were permitted to transport their own household garbage to the Site.

(b) All waste accepted for transportation to the Site by or on behalf of the Town of New Castle consisted of household garbage generated within single family residences. The contracts between the City of Portsmouth, the Town of North Hampton, and the Site owners permitted all forms of solid waste except, shop and ordinance waste from Pease Air Force Base, demolished buildings, junk autos, machinery, tree stumps, or butts of a size that cannot be cut up by woodchipper equipment on site. According to weight summaries prepared by the City of Portsmouth commencing July 1974 through June 1982, the Town of New Castle delivered 7,123 tons of solid waste to the Site.

(c) Only household garbage was delivered for transportation to the Site. The Wentworth Hotel, U.S. Coast Guard Station, and Yacht Club were responsible for hauling their own garbage.

(d) Roadside pickup of household garbage from each residence in Town was performed on a regular basis. Furthermore, residents of the Town who had permits were allowed to take permitted solid waste to the Site during its hours of operation.

(e) Roadside pickup of household garbage from each residence in Town was performed on a regular basis. Furthermore, residents of the Town who had permits were allowed to take permitted solid waste to the Site during its hours of operation.

(f) The Town has no industry and its only commercial enterprises consist of those mentioned above. The owners of the solid waste accepted for transportation were the individual homeowners.

(g) According to weight slip summaries prepared by the City of Portsmouth from July 1974 through June 1982, the Town of New Castle delivered 7,123 tons of solid waste to the Site.

(h) None.

(i) The household garbage delivered to the Site from New Castle was not placed in any particular location at the Site.

(j) The location of any and all household garbage delivered to the Site by the Town of New Castle was selected by persons working at the Site.

(k) On April 21, 1971 the State of New Hampshire, through Mary N. Atchison, M.D., Director of Public Health, granted a permit to the Town of North Hampton for a sanitary landfill located in such town.

(l) The Town of New Castle was not paid for accepting any solid waste for transportation to the Site.

(m) The Town of New Castle paid the following amounts to the City of Portsmouth for disposal of solid waste at the Site:

1972 -	\$5,660.00
1973 -	\$5,460.00
1974 -	\$3,690.00
1975 -	\$5,416.00
1976 -	\$4,500.00
1977 -	\$5,300.00
1978 -	\$5,700.00
1979 -	\$8,200.00
1980 -	\$7,620.00
1981 -	\$7,070.00
1982 -	\$7,800.00

Payments by the Town of New Castle for disposal of solid waste at the Site were made to the City of Portsmouth at the rate of an agreed upon sum per ton, generally.

(n) All household garbage was taken directly to the Site.

(o) It is our understanding that all solid waste delivered to the Site on behalf of the Town of New Castle or by New Castle residents was buried and covered.

(p) It is our understanding that all solid waste delivered to the Site on behalf of the Town of New Castle or by New Castle residents was buried and covered.

(q) Not applicable.

(r) The list of permit holders cannot be located.

15. No.

MARCIH,

REQUEST 14 (m)

WHERE IS THE
SECOND PAGE OF THIS?

HSL

November 3, 1976

MEMORANDUM:

TO: THE HONORABLE BOARD OF SELECTMEN: NEW CASTLE;
NEWINGTON;
NORTH HAMPTON; and
PEASE AIR FORCE BASE

FROM: CALVIN A. CANNEY, CITY MANAGER-PORTSMOUTH, NH

SUBJECT: SOLID WASTE DISPOSAL

We had a preliminary meeting with Mr. Coakley and his Attorney on October 30, 1976. After some explanation of the procedures and cost of operation, Mr. Coakley made the following points:

- 1) He would be required to keep a second machine on the site because of the volume of refuse;
- 2) He would be required to cover the final area with two feet of gravel when he is done filling the twenty-eight (28) acre site.

His proposal amounts to the following:

- 1) A two year contract;
- 2) Second machine and operator:
\$200/day x 307 days = \$61,400.
- 3) Cover material at 70 cu. yd/day x 307 days x
\$1.90 per cu. yd. delivered = \$40,831.
- 4) Final cover at 2 ft./sq.yd. for 28 acre parcel =
\$85,120 over two years.
- 5) Base cost of \$99,600 as set in present contract.

In other words, his proposal is for a two year contract with a flat price of \$244,431 per year regardless of tonnage.

I am requesting a meeting of the present community



FILE

REQUEST 14 (m)

City of Portsmouth. New Hampshire

CITY HALL . . . 126 DANIEL STREET

03801

MEMORANDUM:

DECEMBER 27, 1976

TO: MEMBER TOWNS IN LANDFILL CONTRACT:

- 1) New Castle
- 2) Newington
- 3) N. Hampton
- 4) Pease Air Force Base, N.H.

FROM: CALVIN A. CANNEY, CITY MANAGER

SUBJECT: COAKLEY PROPOSAL

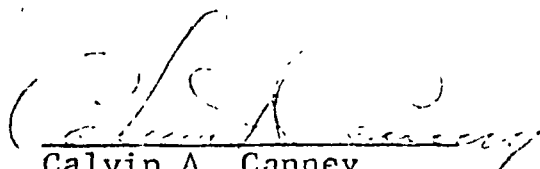
We have now met twice with Mr. Coakley and his attorney. I am enclosing, herewith, a copy of his latest memorandum. At this time, I do not think we will do any better. He will not accept a contract relating to tonnage and will insist on the daily rate regardless of the amount of material.

My best estimate of cost is \$8.43 per ton on the average for the two years. I have enclosed a summary of how the cost will probably be divided based upon our best estimates. You might plan your budget accordingly.

If there is any question, or if the proposed price is unacceptable, please let me know by January 7th, 1977.

Enclosure

cc: City Council
City Attorney
Finance Director
Public Works Director


Calvin A. Canney
City Manager

"City of the Open Door"



- SUMMARY -

Negotiated Cost of Landfill Operation.....\$244,961

Estimated tonnage 1976:

Portsmouth.....22,806 tons

New Castle..... 861 tons

Newington..... 1,939 tons

Pease Air Force Base..... 3,649 tons

1976 Total.....29,255 tons

10% increase 1977..... 2,925

1977 Total.....32,180 tons

10% increase 1978..... 3,218

1978 Total.....35,398 tons

Average over two years.....33,789 tons

Cost of Land-fill:.....\$255,961

Plus Record Keeping..... 28,966

Total Cost:.....\$284,927 ÷ 33,789 tons

Cost per ton:..... \$8.43

MEMORANDUM

City of Portsmouth and Coakley Heirs

Coakley Submission (annual basis)

99,600	- Present annual
40,831	- Windrows and slopes
61,400	- Additional equipment @ \$200 per day
<u>85,120</u>	- 44,800 cubic yards of cover @ \$1.90
286,951	

Coakley estimates 140 tons per day @ \$6.67

City of Portsmouth Response

Pointed out that the cover figure of \$85,120 should be halved to \$42,500 since it represents (at \$85,120) two years. Indicates that the equipment figure of \$200 a day is too high because the equipment can be used part of the time elsewhere. Counter offers as follows:

99,600	- Present annual
40,831	- Windrows and slopes
42,560	- Cover
<u>17,009</u>	- Equipment rental @ \$55+
200,000	

City estimates 110 tons per day @ \$5.92+

Coakley Response

Again has confirmed that the original cover Coakley figure is correct. It takes 1600+ cubic yards of cover to cover an acre 12 inches deep. The two foot State cover requirement therefore translates to 89,600 (1600 x 2 feet x 28 acres). One half of this figure or one year's cover requirements are 44,800 cubic yards @ \$1.90 or the submitted figure of \$85,120.

*This is from Atty. Waldron
If you have any comments please let me know
dec*

Honorable Board of Selectmen: -2-
New Castle; Newington, North Hampton,
and Pease Air Force Base

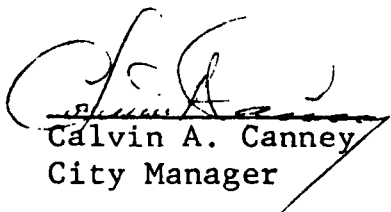
November 3, 1976

Subj: Solid Waste Disposal

representatives in my office at 3:30 p.m., on Wednesday,
November 10, 1976 to discuss the proposal.

Please advise me if you plan to attend: 436-4125

CAC:lzs


Calvin A. Canney
City Manager

Therefore the City's actual counter offer should read as follows:

99,600	- Present annual
40,831	- Windrows and slopes
85,120	- Cover @ \$1.90 per yard
<u>17,007</u>	- Equipment rental
242,558	

This translates to 110 tons a day @ \$7.18

In addition, Coakley rechecked its estimates on tonnage now being deposited (City figures plus unweighed rubbish). First, using the City's own figures, the increase in tonnage from 1975 to 1976 (ten month totals 1975 23,202 -- 1976 26,666 ** 12 months projection 1975 27,842 1976 32,000) is 13%. Projecting this increase to 1977, tonnage will be 36,000+ tons and in 1978, 40,500+ tons. This would reduce to 117 tons daily in 1977 and 133 tons in 1978. This would mean an average per day tonnage of 125 tons, for the two year period. This daily average at the Coakley original proposal of \$6.67 per ton totals \$255,961.25 (\$833.75 per day). This would adjust the Coakley original figures as follows:

99,600	- Present annual
40,831	- Windrows and slopes
85,120	- Cover @ \$1.90 per yard
<u>30,410</u>	- Equipment rental @ \$99 a day
255.961	

While it is the Coakley position that there are at least 8 tons a day not passing over the scales and so not included in the City figures, Coakley will accept the City figures as projected above and provide for the next two years, the services furnished under the present contract (except the night hours waived heretofore by the City) for \$255,961 annually or the disposal of an average 125 tons a day @ \$6.67 per ton. (\$833.75)

Coakley has no desire to operate under any payment schedule except a fixed per diem figure as has been the procedure under the original five year contract.

Payments to City of Portsmouth
for Landfill

1972 - \$5660

1973 - \$5460

1974 - \$3690

1975 - \$5416

1976 - \$4500

1977 - \$5300

1978 - \$5700

1979 - \$8200

1980 - \$7620

1981 - \$7070

1982 - \$7,800

\$66,416



STATE OF NEW HAMPSHIRE
DEPARTMENT OF HEALTH AND WELFARE
DIVISION OF PUBLIC HEALTH SERVICES

REQUEST 4, 5, 14(k)

Sylvio L. Dupuis O.D.
Commissioner
Department of Health and Welfare

William T. Wallace, Jr., M.D., M.P.H.
Director
Division of Public Health Services

Health & Welfare Bldg.
Hazen Drive
Concord NH 03301
Tel (603) 271 4662

271-4621

RECEIVED JAN 11 1985

January 10, 1985

Mr. Mark Beliveau, Esq.
Sanders and McDermott
408 Lafayette Road
Hampton, NH 03842

Dear Mark:

As you requested today during our telephone conversation, please find enclosed the original permit to the Town of North Hampton, New Hampshire relative to the Coakley Landfill. The actual permit is dated April 21, 1971 and was transmitted to Mr. Byron L. Kirby, Chairman, Board of Selectmen, from Mary M. Atchison, M. D., Director of Public Health.

In addition, I also included the documentation that helped to develop the approved permit at that time. This correspondence hopefully will assist you in visualizing conditions as they existed when the Patrick J. Coakley property was being evaluated for use as a public landfill.

I hope this information suits your needs.

Sincerely,

Timothy W. Drew

Timothy W. Drew, Project Officer
Waste Management Engineer
Division of Public Health Services
Office of Waste Management

TWD:jep
encs.



STATE OF NEW HAMPSHIRE
DEPARTMENT of RESOURCES and ECONOMIC DEVELOPMENT

STATE HOUSE ANNEX . . . CONCORD, NEW HAMPSHIRE
TELEPHONE - CAPITOL 3-6611

Office of the Commissioner

July 15 1970

Mr. Gilman Crowell
Dept. of Health & Welfare
61 South Spring Street,
Concord, N.H.

Dear Mr. Crowell:

On July 9th a site for a land fill dump in the towns of Greenland and North Hampton was inspected by, Mr. Crowell and Mr. Calman of the State Health Dept., Mr. Hanchett and Mr. Nelson of the Portsmouth Public Works Dept., Mr. Griffin a Contractor, Mr. Coakley the land owner, and James Ricard, Fire Prevention Officer, and Ivan E. Scranton, District Fire Chief. The area was also checked on July 10th by District Fire Chief, Ralph Stevens. Mr. Ricard, Mr. Stevens and Mr. Scranton agree that from a forest fire angle this would be a good site for a land fill dump providing a few precautions are taken. Grid Location, RL2 - 9 - 22 S/

- 1 Area to be closed by locked gate when unattended
- 2 a strip 50 feet wide to be bulldozed down to mineral earth around area dumping is being done.
- 3 a fence of some kind to keep paper from blowing into woodland to be made.
- 4 Rubbish to be covered every day.

Yours sincerely,

Ralph Stevens
Ivan Scranton
District Fire Chiefs.

RECEIVED

JUL 14 1970

BOARD OF
FOOD & CHEMISTRY

Town of North Hampton
NEW HAMPSHIRE

Office of Selectmen

964-8087

March 8, 1971

Dr Mary W. Atchison, M.D., M.P.H.
Director of Public Health
Department of Health and Welfare
Division of Public Health
c/o Gilman Crowell
61 South Spring Street
Concord, N.H. 03301

This is to request approval to use a certain parcel of land in the Town of North Hampton, New Hampshire as a public disposal site. The parcel of land is owned by Patrick J. Coakley, contains approximately 30 acres and is located at map co-ordinate R 12-9-22 S^W, latitude 43 degrees -01'-03" N, longitude 70 degrees -49'-00" W.

On sight inspections were made on June 1, 1970 and July 9, 1970 by Mr Crowell; Mr Gordon Hanchett, Director of Public Works, City of Portsmouth, New Hampshire; and the Forestry Department's District Fire Chief.

Verbal approval was given by Mr Crowell and the District Fire Chief provided the disposal site is operated in accordance with the State of New Hampshire RSA: Chapter 1-47, Section 25.

Sincerely yours,

For the Town of North Hampton

Byron L. Kirby
Byron L. Kirby, Chairman Selectmen

Maurice E. Kierstead
Maurice E. Kierstead, Selectman

Robert K. Volk, Jr.
Robert K. Volk, Jr., Selectman

RECEIVED

MAR 15 1971

BUREAU OF
FOOD & CHEMISTRY

March 18, 1971

C
O
P
Y

Board of Selectmen
North Hampton
New Hampshire

Gentlemen:

This is to acknowledge your request for approval of a public disposal site on the property of Patrick J. Coakley. We have on record the comments of the District Fire Chiefs; therefore, they will not have to make any further investigation. However, to aid the town in planning and using the most efficient and sanitary methods possible, soil tests should be made by the Rockingham County Conservation District, Exeter, N. H., and if necessary, the Water Supply and Pollution Control Commission will check the site also. They become involved if the water table is high and/or surface water is within 1000 feet. Then they review the area and make recommendations. The state uses this data determining the suitability of the site for use. Apparently this area is suitable, but we still require the tests on each new site. We also require plans which outline the area, show roads, type of disposal planned, etc. I will visit the site as soon as it is reasonable to make a satisfactory determination on the site. I will contact your office before coming and arrange to have one or more of the Board of Selectmen and any other concerned parties you wish to have go over the site with me. This will also give us a chance to discuss the necessary requirements on keeping the new site in a sanitary condition and to properly close your existing site. If you desire a meeting prior to this please contact me and we can set one up.

Sincerely yours,

Thomas L. Sweeney
Solid Waste Disposal

TLS/jm

DISPOSAL SITE REQUEST

Town Northampton

Requested by W. G. Hamilton

Location 1/2 mi. S. of 1st St., between 1st and 2nd St.
Cooking Oil Disposal
Site is in the back yard of W. G. Hamilton
site will be used for

Type of operation cooking oil disposal

Location of nearest residence 1/2 mile

Location of nearby stream or body of water None

Restrictions, if any This site will be limited to
the Northampton part of Mc Cook's Property

Reviewed by:

Town representative Mr. W. G. Hamilton

State Forestry Department representative -

State Health Department representative Small, within 1/2 mile

1966

Call from Jim Hayden (SCS)
about this site -

Date 3/24/71

Bedrock Shallow -

Misc. out gravel pits - Existing Co. Report is accurate

STATE OF NEW HAMPSHIRE

INTER-DEPARTMENT COMMUNICATION

DATE April 15, 1971
AT (OFFICE)

FROM Kenneth MacDonald
Water Pollution Sanitarian

SUBJECT INVESTIGATION OF PORTSMOUTH'S PROPOSED SANITARY LANDFILL SITE IN NORTH HAMPTON AND GREENLAND

TO Terrence P. Frost
Chief Aquatic Biologist *TF*

On Friday, April 2, 1971, Thomas Sweeney, solid wastes engineer with the Bureau of Food and Chemistry, and I perambulated the area in order to assess its value as a sanitary landfill site with respect to drainage and potential water pollution.

The site (marked on accompanying photo print) runs roughly north and south with the southern and higher ground in North Hampton and the under portion in Greenland.

Although the area had partial snow cover at time of inspection, it was evident that most, if not all, of the gravel had been removed and standing water in various areas evidenced the presence of hardpan.

Ledge outcroppings were noted in the high or southern end in North Hampton. In addition a substantial (estimated at about 180 gpm) brook originates perhaps from a spring about halfway along to the North Hampton portion and flows north before being channeled (perhaps by bulldozer) westerly toward the railroad tracks. Aquatic plants in the bed of the brook as well as alder and willow growth along the banks suggest that the brook flows throughout the season rather than ~~temporary~~ ^{temporarily as} spring runoff and snow melt.

Mr. Sweeney indicated that the proposal is based on the landfill operation starting on the high ground at the extreme southern end of the site in North Hampton and gradually working northerly and eventually to or into Greenland.

It is my opinion that this scheme, if pursued, will lower the quality of the surface water which drains that portion of the site.

Mr. Sweeney questioned whether the area might be used if engineers could solve the water problem.

I am not qualified to answer on this and feel that it is a matter to be taken up between municipalities involved and engineers which might specialize in such work.

KJM/mad

cc: Mr. Tom Sweeney

*Yes, I agree with you
about the water problem
- there is no doubt*

April 21, 1971

Mr. Byron L. Kirby, Chairman
Board of Selectmen
North Hampton, New Hampshire

Dear Mr. Kirby:

Acting under the authority of section 25, chapter 147, RSA, this is to grant the Town of North Hampton's request to operate a sanitary land fill disposal area on a site in North Hampton identified as approximately 30 acres on the Patrick J. Coakley property (co-ordinates $21^{\circ}29'-22^{\circ}30'N$, latitude 43° degrees - $0' - 03'' N.$, longitude 70° degrees - $49' - 00'' W$).

In granting this request we must stipulate to the Town that the disposal area must be so located and operated that there will be no contamination or infringement upon the Class B quality of the water in the immediate vicinity. Should such infringement occur, it would be necessary to halt disposal at once.

Sincerely,

Mary M. Atchison, M.D.
Director of Public Health

MMA/jm

c.c. Theodore Natti
Water Supply & Pollution
Forrest Bumford

STATE OF NEW HAMPSHIRE

DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS

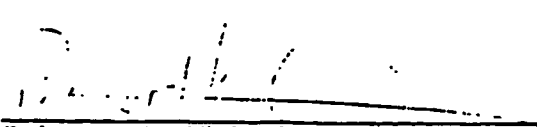
NOTICE OF PUBLIC HEARING

In accordance with Revised Statutes Annotated 249-B as set forth in Chapter 252, Laws of 1967, and as amended by Chapter 81, Laws of 1971, on the 1st day of June, 1972, at 2:00 p.m., in the Town Hall on Atlantic Avenue in North Hampton, New Hampshire, a public hearing will be held on an application to maintain a sanitary landfill submitted to the State of New Hampshire, Department of Public Works and Highways, by Patrick J. Coakley of Greenland.

The location and limits of the sanitary landfill are as follows: Beginning at the intersection of the Greenland, Rye, North Hampton Town Lines, thence west along the Greenland Town Line to a cement marker post on the town line east of the Boston and Maine Railroad bed, thence south along said railroad bed to an iron railroad post 100 feet east of said railroad bed, thence east to an intersection of stone walls at the end of a dirt road, thence north to the point of beginning, the property being owned by Patrick J. Coakley.

I, Robert H. Whitaker, the Commissioner of Public Works and Highways, will cause notice of this hearing to be given to the applicant by mail, postage prepaid, to the address given in the application, and notice of said hearing to be published not less than seven days before date of hearing, in the Portsmouth Herald, said newspaper having circulation within the Town of North Hampton.

Given under my hand this 22nd day of May, A.D. 1972.


Robert H. Whitaker, Commissioner
of Public Works and Highways
State of New Hampshire

June 7, 1972

Gilman K. Crowell, Chief
Food and Chemistry Services

Division of Public Health

Patrick J. Coakley - Sanitary Landfill
North Hampton, New Hampshire

Malcolm J. Chase, P.E.
Special Services Engineer
Department of Public Works
John Morton Building
Concord, New Hampshire 03301

Dear Mr. Chase:

Enclosed is a copy of a letter of approval sent to the Selectmen, Town of North Hampton regarding the proposed sanitary landfill on the property of Mr. Coakley.

Sincerely,

Gilman K. Crowell, Chief
Food and Chemistry Services

GKC/jm

Enc.

Coakley Landfill Weight Slip Summary

REQUEST 4, 5, 14(g)

July 1974 - June 1975

	5	6	7	8	9	10	11	12
	Newington New Castle Pease No. Hampton Ports.							Totals
1 July 1974	159	82	158	201	1729	2329		
2 Aug 1974	144	96	307	205	1687	2439		
3 Sept 1974	112	86	288	150	1788	2424		
4 Oct 1974	157	80	326	168	1676	2407		
5 Nov 1974	133	33	309	162	1539	2176		
6 Dec 1974	144	25	322	158	1446	2095		
7 Jan. 1975	142	30	313	136	1382	2003		
8 Feb. 1975	144	33	303	106	1129	1715		
9 Mar. 1975	160	41	334	136	1337	2008		
10 Apr. 1975	180	53	333	161	1693	2420		
11 May 1975	164	76	381	189	1738	2548		
12 June 1975	153	85	328	198	1565	2329		
13 FY 74-75	1792	720	3702	1970	18709	26893		
14 Totals								
15 (tons)								
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OK

Coakley Landfill Weight Slip Summary

July 1975 - June 1976

	5	6	7	8	9	10	11	12
	Newington New Castle Pease No. Hampton Ports.							Totals
1 July	1975	150	93	341	202	1762	2548	
2 Aug	1975	154	84	388	185	1748	2559	
3 Sept.	1975	197	70	323	166	1741	2497	
4 Oct.	1975	155	83	302	152	1883	2575	
5 Nov.	1975	126	48	287	111	1634	2206	
6 Dec.	1975	136	34	316	189	1739	2414	
7 Jan.	1976	143	40	284	158	1503	2128	
8 Feb.	1976	157	38	269	161	1665	2290	
9 Mar.	1976	189	57	328	184	1748	2506	
10 Apr.	1976	167	63	307	203	2096	2836	
11 May	1976	182	79	316	199	1878	2654	
12 June	1976	189	105	308	194	2237	3033	
13 FY 75-76		1945	794	3769	2104	21634	30246	
14 Totals								
15 (tons)								
16								
17								
18								
19								
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OK

Coakley Landfill Weight Slip Summary

July 1976 - June 1977

	5	6	7	8	9	10	11	12
			Newington	New Castle	Pease	No. Hampton	Portsm.	Totals (ton.)
1	July	1976	164	118	303	210	2324	3119
2								
3	Aug.	1976	157	104	344	189	2052	2846
4								
5	Sept.	1976	163	87	303	130	2092	2775
6								
7	Oct.	1976	166	78	284	113	1838	2479
8								
9	Nov.	1976	175	30	259	117	1623	2204
10								
11	Dec.	1976	184	29	241	97	1485	2036
12								
13	Jan.	1977	172	26	242	103	1381	1924
14								
15	Feb.	1977	180	26	263	87	1379	1935
16								
17	Mar.	1977	231	49	356	95	1854	2585
18								
19	Apr.	1977	181	54	298	133	2411	3077
20								
21	May	1977	242	69	349	93	1948	2701
22								
23	June	1977	183	99	407	114	2016	2819
24								
25	FY 76-77		2198	769	3649	1481	22403	30500
26	Totals							
27	(tons)							
28								
29								
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32								
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OK

Coakley Landfill Weight Slip Summary

July 1977 - June 1978

	5	6	7	8	9	10	11	12
			Newington	NewCastle	Pease No.	Hampton	Portsmouth	Total (to
1 July	1977	92	180	326	127	2068	2793	
2 Aug	1977	200	96	387	132	2160	2975	
3 Sept	1977	196	105	354	125	2003	2783	
4 Oct	1977	98	193	365	129	2082	2867	
5 Nov.	1977	37	195	343	105	1955	2635	
6 Dec	1977	225	47	322	104	1782	2480	
7 Jan	1978	223	30	320	86	1657	2316	
8 Feb	1978	322	22	268	65	1331	2008	
9 Mar	1978	423	39	391	94	1796	2743	
10 Apr	1978	444	51	346	110	1914	2865	
11 May	1978	442	85	371	134	2052	3084	
12 June	1978	422	97	367	138	2054	3078	
13 FY 77-78		3124	1140	4160	1349	22854	32627	
14 Totals								
15 (tons)								

OK

Coakley Landfill Weight Slip Summary

July 1978 - June 1979

	5	6	7	8	9	10	11	12
			Newington	New Castle	Pease	No. Hampton	Portsmouth	Total (tons)
July	1978	315	97	330	184	2184	3110	
Aug	1978	386	107	424	207	2199	3323	
Sept	1978	335	102	314	202	1814	2767	
Oct	1978	353	81	344	208	2024	3010	
Nov	1978	358	50	329	152	1933	2822	
Dec	1978	328	32	351	140	1878	2729	
Jan	1979	345	28	344	125	2011	2853	
Feb	1979	376	26	263	85	1656	2406	
Mar	1979	342	42	340	119	2288	3131	
Apr	1979	355	45	325	133	2294	3152	
May	1979	315	104	362	130	2505	3416	
June	1979	324	110	316	151	2344	3245	
FY 78-79 Totals (tons)		4132	824	4042	1836	25130	35964	
			OK					

OK

U.S. Department of the Interior
July 1977 - June 1980

		6	7	8	9	10	11	12
		Recreation	Neighborhood	Wildlife	Wildlife	Forest	Forest	Total
								(Total)
1	July 1-31 1979	2754.79	199.39	166.60	125.53	303.38		3553-
2	August 1-31 1979	3111.55	328.23	124.44	151.81	367.45		4034-
3	September 1-30 1979	2623.71	290.31	94.04	112.51	303.37		3423-
4	October 1-31 1979	3065.62	333.19	113.50	88.36	325.23		3927-
5	November 1-30 1979	2639.46	257.78	135.24	54.70	293.80		3480-
6	December 1-31 1979	2522.10	244.00	113.00	30.00	263.00		2972-
7	January 1-31 1980	2582.50	236.00	35.50	102.00	235.00		3242-
8	February 1-29 1980	2231.00	258.00	21.00	92.00	252.00		2896-
9	March 1-31 1980	2519.35	220.00	112.50	23.00	231.00		3023-
10	April 1-30 1980	2740.00	156.00	46.00	342.00	340.00		3613-
11	May 1-31 1980	2907.00	541.00	94.00	145.00	319.00		4006-
12	June 1-30 1980	2700.00	386.00	148.00	91.00	296.00		3721-
13	July 1-31 1980	32109.00	3448.00	1201.00	1376.00	3631.00		41771-
14	August 1-31 1980							
15	September 1-30 1980							
16	October 1-31 1980							
17	November 1-30 1980							
18	December 1-31 1980							
19	January 1-31 1981							
20	February 1-29 1981							
21	March 1-31 1981							
22	April 1-30 1981							
23	May 1-31 1981							
24	June 1-30 1981							
25	July 1-31 1981							
26	August 1-31 1981							
27	September 1-30 1981							
28	October 1-31 1981							
29	November 1-30 1981							
30	December 1-31 1981							
31	January 1-31 1982							
32	February 1-29 1982							
33	March 1-31 1982							
34	April 1-30 1982							
35	May 1-31 1982							
36	June 1-30 1982							
37	July 1-31 1982							
38	August 1-31 1982							
39	September 1-30 1982							
40	October 1-31 1982							
41	November 1-30 1982							
42	December 1-31 1982							
43	January 1-31 1983							
44	February 1-29 1983							
45	March 1-31 1983							
46	April 1-30 1983							
47	May 1-31 1983							
48	June 1-30 1983							
49	July 1-31 1983							
50	August 1-31 1983							
51	September 1-30 1983							
52	October 1-31 1983							
53	November 1-30 1983							
54	December 1-31 1983							
55	January 1-31 1984							
56	February 1-29 1984							
57	March 1-31 1984							
58	April 1-30 1984							
59	May 1-31 1984							
60	June 1-30 1984							
61	July 1-31 1984							
62	August 1-31 1984							
63	September 1-30 1984							
64	October 1-31 1984							
65	November 1-30 1984							
66	December 1-31 1984							
67	January 1-31 1985							
68	February 1-29 1985							
69	March 1-31 1985							
70	April 1-30 1985							
71	May 1-31 1985							
72	June 1-30 1985							
73	July 1-31 1985							
74	August 1-31 1985							
75	September 1-30 1985							
76	October 1-31 1985							
77	November 1-30 1985							
78	December 1-31 1985							
79	January 1-31 1986							
80	February 1-29 1986							
81	March 1-31 1986							
82	April 1-30 1986							
83	May 1-31 1986							
84	June 1-30 1986							
85	July 1-31 1986							
86	August 1-31 1986							
87	September 1-30 1986							
88	October 1-31 1986							
89	November 1-30 1986							
90	December 1-31 1986							
91	January 1-31 1987							
92	February 1-29 1987							
93	March 1-31 1987							
94	April 1-30 1987							
95	May 1-31 1987							
96	June 1-30 1987							
97	July 1-31 1987							
98	August 1-31 1987							
99	September 1-30 1987							
100	October 1-31 1987							
101	November 1-30 1987							
102	December 1-31 1987							
103	January 1-31 1988							
104	February 1-29 1988							
105	March 1-31 1988							
106	April 1-30 1988							
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109	July 1-31 1988							
110	August 1-31 1988							
111	September 1-30 1988							
112	October 1-31 1988							
113	November 1-30 1988							
114	December 1-31 1988							
115	January 1-31 1989							
116	February 1-29 1989							
117	March 1-31 1989							
118	April 1-30 1989							
119	May 1-31 1989							
120	June 1-30 1989							
121	July 1-31 1989							
122	August 1-31 1989							
123	September 1-30 1989							
124	October 1-31 1989							
125	November 1-30 1989							
126	December 1-31 1989							
127	January 1-31 1990							
128	February 1-29 1990							
129	March 1-31 1990							
130	April 1-30 1990							
131	May 1-31 1990							
132	June 1-30 1990							
133	July 1-31 1990							
134	August 1-31 1990							
135	September 1-30 1990							
136	October 1-31 1990							
137	November 1-30 1990							
138	December 1-31 1990							
139	January 1-31 1991							
140	February 1-29 1991							
141	March 1-31 1991							
142	April 1-30 1991							
143	May 1-31 1991							
144	June 1-30 1991							
145	July 1-31 1991							
146	August 1-31 1991							
147	September 1-30 1991							
148	October 1-31 1991							
149	November 1-30 1991							
150	December 1-31 1991							

Coakley Landfill Weight Slip Summary
July 1980 - June 1981

	5	6	7	8	9	10	11	12
			Newington	New Castle	Pease	No. Hampton	Portsmouth	Totals (tons)
1	July 1-31	1980	392	105	368	166	2129	3160
2								
3	Aug 1-31	1980	343	89	319	141	1992	2884
4								
5	Sept. 1-30	1980	304	95	303	144	2031	2877
6								
7	Oct	1980	244	102	335	153	2128	2962
8								
9	Nov	1980	143	32	266	159	1865	2465
10								
11	Dec	1980	102	32	274	188	1799	2395
12								
13	Jan	1981	13	38	259	122	1601	2033
14								
15	Feb	1981	—	29	270	120	1632	2051
16								
17	Mar	1981	—	40	299	131	1841	2311
18								
19	Apr	1981	—	47	349	163	2171	2730
20								
21	May	1981	—	72	329	155	2013	2569
22								
23	June	1981	—	106	334	180	2092	2712
24								
25	FY 80-81		1541	787	3705	1822	23294	31149
26	Totals							
27	(tons)							
28								
29								
30								
31								
32								
33								
34								
35								
36								
37								
38								
39								
40								

JUNE 1982

TONS

July 1981	-	2223	-	73	-	326	-
Aug 1981	-	1922	-	95	-	178	-
Sept 1981	-	2135	-	41	-	127	-
Oct 1981	-	1915	-	92	-	140	-
Nov 1981	-	1731	-	40	-	170	-
Dec 1981	12	10042	-	828	-	984	-
Jan 1982	-	1315	-	41	-	140	-
Feb 1982	-	1498	-	26	-	127	-
Mar 1982	-	1467	-	28	-	115	-
April 1982	-	1963	-	28	-	134	-
May 1982	-	1847	-	43	-	149	-
June 1982	-	1322	-	63	-	153	-
July 1982	-	1774	-	53	-	181	-
FY 81-82	12	21648	-	713	-	1995	-
						3949	-
							28318

RICHARD M. PHILBRICK

354 Central Road
RYE, NEW HAMPSHIRE

03870

In account with

8-30

1971

Board of Selectmen
New Castle
New Hampshire

STATEMENT RENDERED			
<p> <i>Over charges for picking up rubbish for the Towns of New Castle (Road side service only) would be as follows:</i> </p>			
<p> <i>Eighty Dollars (\$80.00) per week when hauling to the Jones Avenue dump.</i> </p>			
<p> <i>One Hundred five Dollars (\$105.00) per week when it becomes necessary over</i> </p>			

to have the Rubbers to dumping
facilities in North Hampton.

Said Rubbers would
have to be picked up on
Thursday.

Respectfully submitted

Richard M. Phibbs^{up}

1-4
August 31, 1971

Mr. Richard M. Philbrick
354 Central Road
Rye, New Hampshire 03870

Dear Mr. Philbrick:

The Selectmen at their regularly scheduled meeting last night agreed to accept your proposal for the collection of resident's rubbish in New Castle, effective September 2, 1971, and until further notice.

It is the Town policy to pay for services rendered, on bills which we have available, on the second and last Monday of each month.

We look forward to a lasting relationship and appreciate your taking over the trash collection during our emergency. We have had several compliments on the manner in which the trash has been taken from the Town.

Very truly yours,

John F. Hodgdon, Chairman

For the Selectmen

JFH:amk

September 26, 1972

Mr. Alexander J. Kalinski, Chairman
Public Utilities Commission
26 Pleasant Street
Concord, N. H. 03301

Re: D-T6101 Richard M. Philbrick. Application for authority to operate as a contract carrier of property by motor vehicle in the Towns of Rye, New Castle and North Hampton.

Dear Mr. Kalinski:

During the summer of 1971 the man with whom we had contracted to haul rubbish for the Town of New Castle passed away. We decided on Mr. Richard M. Philbrick to pick up the Town rubbish until such time as bids could be put out for contract.

Subsequently, the contract was bid upon and Mr. Philbrick was awarded the contract to continue his service in the town. The town, of necessity, must have an outside contract carrier for rubbish pick up because there is no local carrier available.

We feel that Mr. Philbrick has served our Town well, and do wholly support his request for whatever licenses are necessary to operate in our Town.

Very truly yours,

John F. Hodgdon
John F. Hodgdon, Chairman
For the Selectmen

JFH/ank

cc: Mr. Richard M. Philbrick

State of New Hampshire

PUBLIC UTILITIES COMMISSION

26 PLEASANT STREET

CONCORD

03301

TELEPHONE AREA CODE 603

271-2452

GERARD O. BERGEVIN
COMMISSIONER

EDMUND L. BARKER
CHIEF ENGINEER

WINSLOW E. MELVIN
TRANSPORTATION DIRECTOR

JOHN W. MCKEE
FINANCE DIRECTOR



FRANCIS J. RIORDAN
COMMISSIONER

CHARLES P. AMYOT
SECRETARY

DAISY Y. JEWELL
ASSISTANT SECRETARY

JOHN F. KERWIN
RATE ENGINEER

ALEXANDER J. KALINSKI
CHAIRMAN

September 20, 1972

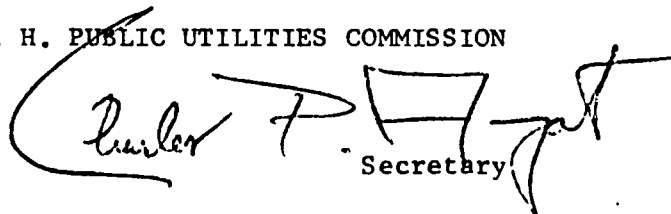
TO: ALL INTERESTED PARTIES

D-T6101 Richard M. Philbrick. Application for authority to operate as a contract carrier of property by motor vehicle in the Towns of Rye, New Castle and North Hampton.

We are enclosing a copy of an Order of Notice issued by the Commission in connection with the above entitled matter.

Very truly yours,

N. H. PUBLIC UTILITIES COMMISSION


Secretary

b
Enc.

THE STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

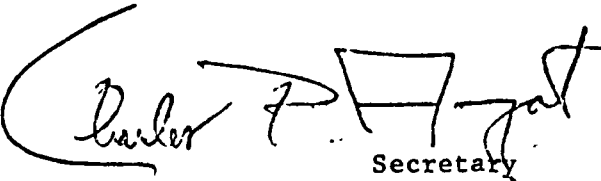
RSA 375B
Chapt. 348
1967

Richard M. Philbrick of Rye, New Hampshire, having filed an application for authority to operate as a contract carrier of property by motor vehicle, for the purpose of transporting refuse between all points and places in Rye, New Castle and North Hampton; it is

ORDERED, that a hearing be held before said Public Utilities Commission at its office in Concord, 26 Pleasant Street, in said State, at two o'clock in the afternoon on the third day of October, 1972; and it is

FURTHER ORDERED, that said petitioner notify all persons desiring to be heard to appear at said hearing, when and where they may be heard upon the question whether the prayer of said petition may be granted consistently with the public good, by causing an attested copy of this order of notice to be published once in a daily newspaper having general circulation in that portion of the State in which operations are proposed to be conducted, such publication to be not later than September 29, 1972, said publication to be designated in an affidavit to be made on a copy of this order of notice and filed with this office.

By order of the Public Utilities Commission of New Hampshire this
twentieth day of September, 1972.


Secretary



Office of The City Manager

Portsmouth, New Hampshire 03801

July 14, 1971

Mr. John F. Hodgdon
Chairman
Board of Selectmen
New Castle, New Hampshire

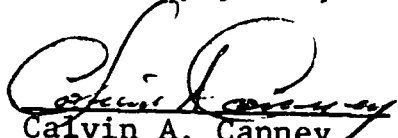
Dear Mr. Hodgdon:

This is to advise you that the City of Portsmouth has completed negotiations with North Hampton for use of the COAKLEY GRAVEL PIT as a sanitary land-fill. The basic contract provides that the City will have primary responsibility for operations and contracts with other users.

I would advise you further, that we will hold a meeting in the Council Chamber at City Hall at 7:30 p.m., on August 4th, 1971 to begin negotiations with all parties who are eligible, Newington, New Castle and Pease Air Force Base, and wish to use said land-fill.

If you have a desire to participate, please have a representation at this meeting to discuss a contract proposal.

Sincerely yours,


Calvin A. Canney
City Manager

CAC:1

THE STATE OF NEW HAMPSHIRE

87-C-660

ROCKINGHAM, SS

APRIL TERM, 1987

SUPERIOR COURT

87-C-660

Richard L. Ferland and Evelyn Ferland

v.

Coakley Landfill, Inc. and Ronald C. Coakley

SPECIAL PLEA AND BRIEF STATEMENT OF DEFENDANTS,
COAKLEY LANDFILL, INC. AND RONALD C. COAKLEY, INDIVIDUALLY

NOW COME defendants in the above-captioned action and file this Special Plea and Brief Statement pursuant to Superior Court Rule 28. Defendants reserve the right to amend this Special Plea should discovery or proceedings disclose the availability of additional affirmative defenses.

SPECIAL PLEAS APPLICABLE TO BOTH COAKLEY LANDFILL,
INC. AND RONALD C. COAKLEY, INDIVIDUALLY

1. The Writ of Summons fails to state a claim upon which relief may be granted because:

(a) The municipal sanitary landfill located upon defendant, Coakley Landfill, Inc. property is presently under EPA jurisdiction and in the midst of a Remedial Investigation and Feasibility Study to determine appropriate remedial activities consistent with the National Contingency Plan.

(b) Section 310 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) specifies the jurisdictional, substantive, and procedural requirements for

citizen suits, none of which have been complied with by plaintiffs.

(c) RSA Chapter 147-B, relied upon by plaintiffs, states:

"Nothing contained in this Chapter is intended to duplicate the functions set forth in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, Public Law 96-610. The purpose of this Chapter shall not be to pay compensation for claims for any costs of response or damages or claims which may be compensated under the above-mentioned federal law. (RSA 147-B:1 III (Cum. Supp. 1986))."

(d) In addition to the action being preempted by CERCLA Section 310, the action is barred because of plaintiffs' failure to provide written notification to the defendants and to the EPA sixty days prior to commencing litigation.

2. Plaintiffs are barred and estopped from raising the allegations contained in the Writ of Summons because:

(a) Upon information and belief, plaintiffs purchased their property when they knew or should have known of the contamination problem.

(b) Plaintiffs' property is serviced by public water.

(c) Plaintiffs' damages, if any, have been caused by the actions or inactions of third parties, including plaintiffs themselves. In addition, plaintiffs assumed the risk of incurring problems in development of the property.

3. The Writ of Summons is defective and should be dismissed for plaintiffs' failure to add necessary parties because:

(a) The subject landfill is a municipal sanitary landfill operated by the City of Portsmouth, and under permit from the State of New Hampshire to the Town of North Hampton.

(b) Whereas your defendants contributed none of the waste materials to the sanitary landfill, the following entities and concerns are known to have contributed major amounts of the waste materials to the facility.

1. City of Portsmouth, New Hampshire;
2. City of Newington, New Hampshire;
3. Pease Air Force Base;
4. Town of North Hampton, New Hampshire;
5. Town of Rye, New Hampshire;
6. State of New Hampshire; and
7. United States Coast Guard;
8. Town of Eliot, Maine;
9. Portsmouth Naval Shipyard;
10. Town of New Castle, New Hampshire.

(c) Defendants are severely prejudiced unless all necessary parties are made parties to this action.

4. Defendants rely upon the defenses set forth in RSA 147-B:10-a III.

5. The Writ of Summons fails to state a cause of action under RSA 147-B:10, because plaintiffs are not persons who have expended funds to remedy environmental damage consistent with the laws and rules of the State of New Hampshire, and further are not persons who have made expenditures recognized as recoverable under RSA 147-B:10 II.

6. At all times prior to the closure of the subject municipal sanitary landfill, the landfill was operated and

maintained by the City of Portsmouth, and the Town of North Hampton pursuant to permits issued by the State of New Hampshire. The defendants believe, therefore, that they are immune from the claims raised in the Writ of Summons, and that having operated under such permits represents an absolute defense to this private action for damages.

7. For reasons set forth above, including plaintiffs' prior knowledge of the contamination problem, this case is barred under the doctrine of laches, and by the applicable statute of limitations.

8. Pursuant to New Hampshire Constitution Part 1, Article 23, Count I of the Complaint under RSA 147-B cannot apply to actions, inactions, conditions, occurrences or circumstances occurring prior to the effective date of the New Hampshire Hazardous Waste Statutes, and their predecessors, same being July 1, 1979. (1979 NH Laws 347:2, codified at RSA 147:48 et seq. (Supp. 1979)). See Norton v. Patten, 125 NH 413, 415 (1984), U.S. v. Ottati & Goss, Inc., 23 ERC 1705, 1749-51 (D.M.H. 1985).

9. By way of limitation, defendants also rely on the statute of limitations to limit plaintiffs' damages and claims to actions, inactions, circumstances, conditions and occurrences which occurred within the six years preceding the filing of this Writ of Summons, or in the alternative, to bar this action entirely.

**AFFIRMATIVE DEFENSES APPLICABLE TO
RONALD C. COAKLEY, INDIVIDUALLY**

1. In addition to the affirmative defenses set forth above, defendant Ronald C. Coakley, Individually, relies on these additional defenses.

2. Count I of the Writ of Summons fails to state a cause of action against Ronald C. Coakley, individually because:

(a) At all times pertinent hereto, the sanitary landfill property was owned by Coakley Landfill, Inc., not by Ronald C. Coakley, individually.

(b) At all times pertinent hereto, the sanitary landfill was operated by the City of Portsmouth, New Hampshire and Coakley Landfill, Inc.

(c) At all times pertinent hereto, those entities responsible for contracting, agreeing or otherwise arranging for the disposal or treatment of municipal waste materials at the landfill was the City of Portsmouth, New Hampshire and Coakley Landfill, Inc.

(d) At all times pertinent hereto, independent waste haulers under agreement with the City of Portsmouth or the other municipalities served by the regional waste disposal compact, were the parties responsible for accepting the waste materials for disposal at the sanitary landfill.

(e) Therefore, Ronald C. Coakley, individually, does not fall within those class of persons who may be subject to liability under RSA 147-B:10.

3. The Writ of Summons in Counts II and III fails to state a cause of action against Ronald C. Coakley, individually, because plaintiffs cannot pierce the corporate veil to assert personal liability for purely corporate matters.

4. Counts II and III are barred by the statute of limitations against Ronald Coakley. Sundell v. Town of New London, 119 NH 839 (1979).

Respectfully submitted,
COAKLEY LANDFILL, INC. AND
RONALD C. COAKLEY, INDIVIDUALLY
By their Attorneys:
DEVINE & NYQUIST

Dated: *May 26, 1987*

By: *Kevin C. Devine*
Kevin C. Devine
66 Hanover Street
Manchester, NH 03101
(603)668-5888

BINGHAM, DANA & GOULD
Co-Counsel for Ronald C.
Coakley, Individually

Dated: *May 26, 1987*

By: *Rory FitzPatrick*
Rory FitzPatrick
100 Federal Street
Boston, MA 02110

CERTIFICATION

I hereby certify that a copy of this document was this day mailed, postage prepaid, to all counsel of record.

Dated: *May 26, 1987*

Kevin C. Devine
Kevin C. Devine

105
2/3/77

MEMORANDUM:

TO: THE TOWNS PARTICIPATING IN THE LANDFILL
CONTRACT:

Town of New Castle
Newington
North Hampton
Pease Air Force Base

FROM: THE CITY MANAGER

SUBJECT: LANDFILL CONTRACT January 31, 1977

Enclosed you will find a copy of the final Master Contract concerning the Coakley Landfill. It is as outlined in my previous memo to you.

You will also find a copy of the agreement which covers the City of Portsmouth and the Towns.

Would you please review these documents and return the Agreement to me signed by the proper authorities by February 15, 1977.

If there is any question, please call me.

Calvin A. Canney
City Manager

New

A G R E E M E N T

Whereas the City of Portsmouth, New Hampshire, has entered into an agreement to act as principal agent in the operation of a sanitary land fill in the Town of North Hampton, New Hampshire, and

WHEREAS the Town of _____, New Hampshire is desirous of participating in said sanitary land fill,

Now Therefore for and in consideration of the mutual promises herein contained the parties hereto agree as follows:

1. The Town agrees to abide by the terms and conditions contained in the contract between the City and The Landowners of the Coakley landfill and the Town of North Hampton.
2. The Town agrees to participate for and during the term of the contract as aforesaid.
3. The Town agrees that the Land Fill area be used as a depository for solid waste with the exception of that from demolished buildings, junked automobiles, machinery, and tree stumps which are of a size that cannot be effectively cut up by "woodchipper" equipment.
4. The parties agree that the term of this agreement shall be for two years beginning on the 4th day of January, 1977 and ending on the 3rd day of January, 1979, unless it shall be determined under the Master Contract that there is insufficient useable landfill area remaining to continue operations.

5. That the land fill operation shall be open for those hours and times as set forth in the Master Contract.
6. That the Town shall pay to the City fully and within 45 days after receipt of billing, that portion of its share of the expenses of the operation of the Sanitary Land Fill as has been agree upon in this Contract.
7. The Town agrees that it will assume the responsibility for contracting for commercial carriers and for policing them to insure that the material as may be delivered by them to the site has been collected within its municipal boundaries.
8. The Town agrees that it will assume the responsibility of requiring all its users of the Land Fill Area to display a decal to be obtained from Town Offices.
9. The Town agrees that it will register with the City all municipal and commercial carriers engaged in the transporting of solid waste to the facility., and further agrees that any and all bills for services to these carriers will be sent directly by the City of Portsmouth to the contracting community who shall be responsible for said bills.
10. The Town agrees that all costs which are required by reason of the Land Fill operation by the terms of the original contracts will be assessed according to the basis as set forth in them.

11. The Town agrees that it shall be responsible for its assessment and that it shall pay the same whether or not it uses the land fill during the period that the Land Fill facility is available or for a full period of two years whichever shall come first.

In Witness whereof the parties hereto have set their hand and seals this _____ day of _____ 1977.

CITY OF PORTSMOUTH

By: _____

TOWN OF:

BY: _____

BY: _____

BY: _____

AGREEMENT

This Agreement made this 26th day of January 1981 between the City of Portsmouth, New Hampshire (hereinafter "City") and the Town of NEW CASTLE, New Hampshire (hereinafter "Town").

W I T N E S S E T H:

WHEREAS: The City has entered an agreement with the Town of North Hampton and Coakley Landfill, Inc. dated JANUARY 16, 1981 (hereinafter "Master Contract") for operation of a sanitary landfill in said Town of North Hampton on land owned by said corporation (hereinafter "Landfill") and

WHEREAS: The Town desires to make use of the Landfill;
NOW THEREFORE:

For and in consideration of the mutual promises herein contained, the parties hereto agree as follows:

1. The Town agrees to abide by the terms and conditions of the Master Contract;
2. The term of this Agreement shall be eighteen (18) months beginning on January 3, 1981 and ending on July 2, 1982, unless the Master Contract is terminated prior to July 2, 1982 in which case the obligations of the parties under this agreement shall be terminated on the date of termination of the Master Contract;
3. The Landfill shall be used as a depository for solid waste, with the exception of solid waste from demolished buildings, junked automobiles, machinery, tree stumps of a size that cannot be effectively cut up by "wood chipper equipment", and all waste classified as hazardous by the State of New Hampshire or the United States Government;

4. The Town shall be responsible to contract for commercial carriers as may be necessary to deliver its solid waste and to ensure that material delivered by such carriers has been collected within its municipal boundaries;

5. The Town shall register with the City, all municipal and commercial carriers engaged in the transporting and delivery of solid waste to the Landfill;

6. The Town shall require all carriers delivering the material collected within its municipal boundaries to display a decal for identification to be obtained from the Town;

7. All bills for services to the Town's carriers shall be sent by the City directly to the Town, which shall be responsible for said bills;

8. The Landfill operation shall be open at the times set forth in the Master Contract;

9. The Town shall pay the City for solid waste delivered to the Landfill at the rate of \$11.14 per ton;

10. The Town shall pay the City at the established rate for a minimum of 1275 tons of solid waste during the term of this Agreement, whether or not such minimum tonnage is actually delivered to the Landfill;

11. The City shall bill the Town monthly for an amount based on one-eighteenth (1/18th) of the agreed minimum tonnage. In addition, the City shall bill the Town monthly for tonnage delivered in excess of said minimum monthly figure; provided that such excess tonnages shall be credited to any previous monthly tonnages below said minimum monthly figure;

12. The Town shall be responsible for a share of any other costs to be assessed to users of the Landfill under the terms of the Master Contract, which share shall in proportion be the Town's share of the total tonnage delivered to the Landfill during the term of this Agreement.

BY: *John J. Smith*
Albert M. D. Johnson
Amos W. Johnson